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8
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9 Page

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12
13 **THE PEOPLE OF THE STATE OF
CALIFORNIA**

14
15 Plaintiff,

16 v.

17 **21ST CENTURY HEALTHCARE, INC.,
APEX FITNESS GROUP, A DIVISION OF
24 HOUR FITNESS USA, INC., BIOSAN
18 LABORATORIES, INC., BLUEBONNET
NUTRITION CORPORATION, BRONSON
19 NUTRITIONALS, LLC, BURIED
TREASURE, A DIVISION OF LIFE LINE
20 FOOD INC., D&E PHARMACEUTICALS,
INC., DAVINCI LABORATORIES OF
21 VERMONT, NATROL, INC., DESIGNS
FOR HEALTH, INC., DOUGLAS
22 LABORATORIES, DYNAMIC HEALTH
LABORATORIES, INC., ENZYMATIC
23 THERAPY, INC., FAIRHAVEN HEALTH,
LLC, FOODSCIENCE CORPORATION,
24 FOODSCIENCE OF VERMONT,
FUTUREBIOTICS, LLC, GENSPEC LABS,
25 LLC, HEALTH AUTHORITY, LLC,
INTEGRATIVE THERAPEUTICS, INC.,
26 IRWIN NATURALS, J.R. CARLSON
LABORATORIES, INC., KIRKMAN,
27 KORDIAL NUTRIENTS, METABOLIC
MAINTENANCE PRODUCTS, INC.,**
28

RG08426937

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTY AND INJUNCTIVE
RELIEF**

**Assigned for all purposes to the Honorable
Robert Freedman**

Dept.: 20

Complaint Filed: December 23, 2008

Trial Date: None Set

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27 KORDIAL NUTRIENTS, METABOLIC
MAINTENANCE PRODUCTS, INC.,**

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTY AND INJUNCTIVE
RELIEF**

**METAGENICS, INC., MOUNTAIN
NATURALS OF VERMONT, NATURAL
ORGANICS, INC., NATURE'S SECRET,
NATURE'S WAY PRODUCTS, INC., NBTY
MANUFACTURING, LLC, NEW
CHAPTER, INC., NEXGEN PHARMA,
INC., NF FORMULAS, INC., NOW FOODS,
NUTRITION RESOURCE, INC.,
NUTRITIONAL SPECIALTIES, INC.,
NUTRI-WEST, OLYMPIAN LABS, INC.,
RANDAL OPTIMAL NUTRIENTS, INC.
PIONEER NUTRITIONAL FORMULAS,
INC., PURE ESSENCE LABORATORIES,
INC., RAINBOW LIGHT NUTRITIONAL
SYSTEMS, INC., SOLGAR, INC.,
SUPERNUTRITION LIFE-EXTENSION
RESEARCH, INC., THE DAILY
WELLNESS COMPANY, THE VITAMIN
SHOPPE INDUSTRIES, INC.,
THRESHOLD ENTERPRISES, LTD.,
UNIVERSAL NUTRITION, WYETH,
WAL-MART STORES, INC. DOES 1
THROUGH 500,**

Defendants.

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1 Plaintiff, the People of the State of California, ex. rel Edmund G. Brown Jr., Attorney
2 General, Thomas Orloff, District Attorney for the County of Alameda, Edward S. Berberian,
3 District Attorney for the County of Marin, Dean D. Flippo, District Attorney for the County of
4 Monterey, Gary Lieberstein, District Attorney for the County of Napa, Tony Rackauckas, District
5 Attorney for the County of Orange, Bob Lee, District Attorney for the County of Santa Cruz,
6 Gerald C. Benito, District Attorney for the County of Shasta, David W. Paulson, District Attorney
7 for the County of Solano, and Stephan R. Passalacqua, District Attorney for the County of
8 Sonoma, hereby alleges:

9 **I. PRELIMINARY STATEMENT**

10 1. This complaint seeks to remedy the failure of defendants to warn persons of exposure
11 to lead, which is a chemical known to the State of California to cause birth defects, or other
12 reproductive harm, and cancer. Under the Safe Drinking Water and Toxic Enforcement Act of
13 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must
14 provide persons with a "clear and reasonable warning" before exposing individuals to chemicals
15 known to the state to cause cancer or reproductive harm. In this case, exposure to lead occurs
16 when individuals ingest vitamin supplements that contain lead. "Vitamin Supplements" are
17 products sold for the purpose of supplementing the intake of various vitamins, minerals, and
18 nutrients over and above that obtained from food.

19 **II. PARTIES**

20 2. Plaintiff is the People of the State of California, ex. rel Edmund G. Brown Jr.,
21 Attorney General, Thomas Orloff, District Attorney for the County of Alameda, Edward S.
22 Berberian, District Attorney for the County of Marin, Dean D. Flippo, District Attorney for the
23 County of Monterey, Gary Lieberstein, District Attorney for the County of Napa, Tony
24 Rackauckas, District Attorney for the County of Orange, Bob Lee, District Attorney for the
25 County of Santa Cruz, Gerald C. Benito, District Attorney for the County of Shasta, David W.
26 Paulson, District Attorney for the County of Solano, and Stephan R. Passalacqua, District
27 Attorney for the County of Sonoma. Health and Safety Code section 25249.7, subdivision (c)
28 provides that actions to enforce Proposition 65 may be brought by the Attorney General or a

1 District Attorney in the name of the People of the State of California. Business and Professions
2 Code sections 17200 et seq. provide that actions to enforce that statute may be brought by the
3 Attorney General in the name of the People of the State of California, or by a District Attorney.

4 3. Defendant 21st CENTURY HEALTHCARE, INC. is a business entity that sells, or
5 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
6 that contain lead within the State of California, or made vitamin supplements available for sale in
7 California, without first giving clear and reasonable warning.

8 4. Defendant APEX FITNESS GROUP, A DIVISION OF 24 HOUR FITNESS USA,
9 INC. is a business entity that sells, or has, at times relevant to this complaint, manufactured,
10 distributed, or sold vitamin supplements that contain lead within the State of California, or made
11 vitamin supplements available for sale in California, without first giving clear and reasonable
12 warning.

13 5. Defendant BIOSAN LABORATORIES, INC., which does business as INNATE
14 RESPONSE, INC., and MEGAFOOD, INC., is a business entity that sells, or has, at times
15 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
16 lead within the State of California, or made vitamin supplements available for sale in California,
17 without first giving clear and reasonable warning.

18 6. Defendant BLUEBONNET NUTRITION CORPORATION is a business entity that
19 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
20 supplements that contain lead within the State of California, or made vitamin supplements
21 available for sale in California, without first giving clear and reasonable warning.

22 7. Defendant BRONSON NUTRITIONALS, LLC, which does business as BRONSON
23 LABORATORIES is a business entity that sells, or has, at times relevant to this complaint,
24 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
25 California, or made vitamin supplements available for sale in California, without first giving clear
26 and reasonable warning.

27 8. Defendant BURIED TREASURE, A DIVISION OF LIFE LINE FOOD INC., is a
28 business entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or

1 sold vitamin supplements that contain lead within the State of California, or made vitamin
2 supplements available for sale in California, without first giving clear and reasonable warning.

3
4 9. Defendant D&E PHARMACEUTICALS, INC. is a business entity that sells, or has,
5 at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
6 contain lead within the State of California, or made vitamin supplements available for sale in
7 California, without first giving clear and reasonable warning.

8 10. Defendant DAVINCI LABORATORIES OF VERMONT (a subsidiary of
9 FOODSCIENCE CORP.), is a business entity that sells, or has, at times relevant to this
10 complaint, manufactured, distributed, or sold vitamin supplements that contain lead within the
11 State of California, or made vitamin supplements available for sale in California, without first
12 giving clear and reasonable warning.

13 11. Defendant NATROL, INC., doing business as DELAWARE NATROL, INC. is a
14 business entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or
15 sold vitamin supplements that contain lead within the State of California, or made vitamin
16 supplements available for sale in California, without first giving clear and reasonable warning.

17 12. Defendant DESIGNS FOR HEALTH, INC. is a business entity that sells, or has, at
18 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
19 contain lead within the State of California, or made vitamin supplements available for sale in
20 California, without first giving clear and reasonable warning.

21 13. Defendant DOUGLAS LABORATORIES is a business entity that sells, or has, at
22 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
23 contain lead within the State of California, or made vitamin supplements available for sale in
24 California, without first giving clear and reasonable warning.

25 14. Defendant DYNAMIC HEALTH LABORATORIES, INC. is a business entity that
26 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
27 supplements that contain lead within the State of California, or made vitamin supplements
28 available for sale in California, without first giving clear and reasonable warning.

1 15. Defendant ENZYMATIC THERAPY, INC., including its division
2 PHYTOPHARMICA, is a business entity that sells, or has, at times relevant to this complaint,
3 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
4 California, or made vitamin supplements available for sale in California, without first giving clear
5 and reasonable warning.

6 16. Defendant FAIRHAVEN HEALTH, LLC is a business entity that sells, or has, at
7 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
8 contain lead within the State of California, or made vitamin supplements available for sale in
9 California, without first giving clear and reasonable warning.

10 17. Defendant FOODSCIENCE CORPORATION is a business entity that sells, or has, at
11 times relevant to this complaint, manufactured, distributed, or sold, vitamin supplements that
12 contain lead within the State of California, or made vitamin supplements available for sale in
13 California, without first giving clear and reasonable warning.

14 18. Defendant FOODSCIENCE OF VERMONT (a subsidiary of FOODSCIENCE
15 CORP.), is a business entity that sells, or has, at times relevant to this complaint, manufactured,
16 distributed, or sold vitamin supplements that contain lead within the State of California, or made
17 vitamin supplements available for sale in California, without first giving clear and reasonable
18 warning.

19 19. Defendant FUTUREBIOTICS, LLC is a business entity that sells, or has, at times
20 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
21 lead within the State of California, or made vitamin supplements available for sale in California,
22 without first giving clear and reasonable warning.

23 20. Defendant GENSPEC LABS, LLC is a business entity that sells, or has, at times
24 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
25 lead within the State of California, or made vitamin supplements available for sale in California,
26 without first giving clear and reasonable warning.

27 21. Defendant HEALTH AUTHORITY, LLC, doing business as DOCTOR'S TRUST
28 VITAMINS, is a business entity that sells, or has, at times relevant to this complaint,

1 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
2 California, or made vitamin supplements available for sale in California, without first giving clear
3 and reasonable warning.

4 22. Defendant INTEGRATIVE THERAPEUTICS, INC. is a business entity that sells, or
5 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
6 that contain lead within the State of California, or made vitamin supplements available for sale in
7 California, without first giving clear and reasonable warning.

8 23. Defendant IRWIN NATURALS is a business entity that sells, or has, at times
9 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
10 lead within the State of California, or made vitamin supplements available for sale in California,
11 without first giving clear and reasonable warning.

12 24. Defendant J.R. CARLSON LABORATORIES, INC. is a business entity that sells, or
13 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
14 that contain lead within the State of California, or made vitamin supplements available for sale in
15 California, without first giving clear and reasonable warning.

16 25. Defendant KIRKMAN is a business entity that sells, or has, at times relevant to this
17 complaint, manufactured, distributed, or sold vitamin supplements that contain lead within the
18 State of California, or made vitamin supplements available for sale in California, without first
19 giving clear and reasonable warning.

20 26. Defendant KORDIAL NUTRIENTS is a business entity that sells, or has, at times
21 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
22 lead within the State of California, or made vitamin supplements available for sale in California,
23 without first giving clear and reasonable warning.

24 27. Defendant METABOLIC MAINTENANCE PRODUCTS, INC. is a business entity
25 that sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
26 supplements that contain lead within the State of California, or made vitamin supplements
27 available for sale in California, without first giving clear and reasonable warning.
28

1 28. Defendant METAGENICS, INC. is a business entity that sells, or has, at times
2 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
3 lead within the State of California, or made vitamin supplements available for sale in California,
4 without first giving clear and reasonable warning.

5 29. Defendant MOUNTAIN NATURALS OF VERMONT (a subsidiary of
6 FOODSCIENCE CORP.) is a business entity that sells, or has, at times relevant to this complaint,
7 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
8 California, or made vitamin supplements available for sale in California, without first giving clear
9 and reasonable warning.

10 30. Defendant NATURAL ORGANICS, INC. is a business entity that sells, or has, at
11 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
12 contain lead within the State of California, or made vitamin supplements available for sale in
13 California, without first giving clear and reasonable warning.

14 31. Defendant NATURE'S SECRET is a business entity that sells, or has, at times
15 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
16 lead within the State of California, or made vitamin supplements available for sale in California,
17 without first giving clear and reasonable warning.

18 32. Defendant NATURE'S WAY PRODUCTS, INC. is a business entity that sells, or
19 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
20 that contain lead within the State of California, or made vitamin supplements available for sale in
21 California, without first giving clear and reasonable warning.

22 33. Defendant NBTY MANUFACTURING, LLC is a business entity that, through
23 control and direction of its subsidiaries, which include but are not limited to AMERICAN
24 HEALTH, INC., GOOD 'N NATURAL, NATURE'S BOUNTY, PURITAN'S PRIDE,
25 SUNDOWN, VITAMIN WORLD ONLINE, INC., and SOLGAR, INC., sells, or has, at times
26 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
27 lead within the State of California, or made vitamin supplements available for sale in California,
28 without first giving clear and reasonable warning. Plaintiff is informed and believes, and based

1 on such information and belief alleges, that NBTY, INC., exercises sufficient control over the
2 operations and activities of its identified subsidiaries that it is responsible for the actions of the
3 subsidiaries, and that it has itself caused exposures in the course of doing business under Health
4 & Safety Code section 25249.6.

5 34. Defendant NEW CHAPTER, INC. is a business entity that sells, or has, at times
6 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
7 lead within the State of California, or made vitamin supplements available for sale in California,
8 without first giving clear and reasonable warning, including but not limited to products sold under
9 the name Newmark.

10 35. Defendant NEXGEN PHARMA, INC., including but not limited to activities
11 undertaken through its VITAMER LABORATORIES division, is a business entity that sells, or
12 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
13 that contain lead within the State of California, or made vitamin supplements available for sale in
14 California, without first giving clear and reasonable warning.

15 36. Defendant NF FORMULAS, INC. is a business entity that sells, or has, at times
16 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
17 lead within the State of California, or made vitamin supplements available for sale in California,
18 without first giving clear and reasonable warning.

19 37. Defendant NOW FOODS is a business entity that sells, or has, at times relevant to
20 this complaint, manufactured, distributed, or sold vitamin supplements that contain lead within
21 the State of California, or made vitamin supplements available for sale in California, without first
22 giving clear and reasonable warning.

23 38. Defendant NUTRITION RESOURCE, INC., doing business as NUTRIBIOTIC is a
24 business entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or
25 sold vitamin supplements that contain lead within the State of California, or made vitamin
26 supplements available for sale in California, without first giving clear and reasonable warning.

27 39. Defendant NUTRITIONAL SPECIALTIES, INC. is a business entity that sells, or
28 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements

1 that contain lead within the State of California, or made vitamin supplements available for sale in
2 California, without first giving clear and reasonable warning.

3 40. Defendant NUTRI-WEST is a business entity that sells, or has, at times relevant to
4 this complaint, manufactured, distributed, or sold vitamin supplements that contain lead within
5 the State of California, or made vitamin supplements available for sale in California, without first
6 giving clear and reasonable warning.

7 41. Defendant OLYMPIAN LABS, INC. is a business entity that sells, or has, at times
8 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
9 lead within the State of California, or made vitamin supplements available for sale in California,
10 without first giving clear and reasonable warning.

11
12 42. Defendant RANDAL OPTIMAL NUTRIENTS, INC., is a business entity that sells,
13 or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
14 that contain lead within the State of California, or made vitamin supplements available for sale in
15 California, without first giving clear and reasonable warning.

16 43. Defendant PIONEER NUTRITIONAL FORMULAS, INC. is a business entity that
17 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
18 supplements that contain lead within the State of California, or made vitamin supplements
19 available for sale in California, without first giving clear and reasonable warning.

20 44. Defendant PURE ESSENCE LABORATORIES, INC. is a business entity that sells,
21 or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
22 that contain lead within the State of California, or made vitamin supplements available for sale in
23 California, without first giving clear and reasonable warning.

24 45. Defendant RAINBOW LIGHT NUTRITIONAL SYSTEMS, INC. is a business entity
25 that sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
26 supplements that contain lead within the State of California, or made vitamin supplements
27 available for sale in California, without first giving clear and reasonable warning.

1 46. Defendant SOLGAR, INC., (a subsidiary of NBTY, Inc.), is a business entity that
2 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
3 supplements that contain lead within the State of California, or made vitamin supplements
4 available for sale in California, without first giving clear and reasonable warning.

5
6 47. Defendant SUPERNUTRITION LIFE-EXTENSION RESEARCH, INC. is a business
7 entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or sold
8 vitamin supplements that contain lead within the State of California, or made vitamin
9 supplements available for sale in California, without first giving clear and reasonable warning.

10 48. Defendant THE DAILY WELLNESS COMPANY is a business entity that sells, or
11 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
12 that contain lead within the State of California, or made vitamin supplements available for sale in
13 California, without first giving clear and reasonable warning.

14 49. Defendant THE VITAMIN SHOPPE INDUSTRIES, INC. is a business entity that
15 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
16 supplements that contain lead within the State of California, or made vitamin supplements
17 available for sale in California, without first giving clear and reasonable warning. This defendant
18 is also a retailer of the Vitamin Supplements made by other defendants, both in its retail stores
19 (including a location within the County of Alameda), and over the internet.

20 50. Defendant THRESHOLD ENTERPRISES, LTD. is a business entity that sells, or
21 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
22 that contain lead within the State of California, or made vitamin supplements available for sale in
23 California, without first giving clear and reasonable warning.

24 51. Defendant UNIVERSAL NUTRITION is a business entity that sells, or has, at times
25 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
26 lead within the State of California, or made vitamin supplements available for sale in California,
27 without first giving clear and reasonable warning.

1 52. Defendant WYETH through its prior ownership of Solgar, Inc., has in the past
2 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
3 California, or made vitamin supplements available for sale in California, without first giving clear
4 and reasonable warning. On a date less than four years prior to the filing of this complaint,
5 WYETH sold Solgar, Inc., to defendant NBTY, INC.

6 53. Defendant WAL-MART STORES, INC., is a business entity that sells, or has, at
7 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
8 contain lead within the State of California, or made vitamin supplements available for sale in
9 California, without first giving clear and reasonable warning, including, but not limited to, the
10 Spring Valley brand.

11 54. Defendants DOES 1 THROUGH 500 are business entities that sell, or have, at times
12 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
13 lead within the State of California, or made vitamin supplements available for sale in California,
14 without first giving clear and reasonable warning, but whose identities are unknown to Plaintiff.

15 **III. JURISDICTION AND VENUE**

16 55. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
17 because this case is a cause not given by statute to other trial courts.

18 56. This Court has jurisdiction over each defendant named above, because each is a
19 business entity that does sufficient business, has sufficient minimum contacts in California, or
20 otherwise intentionally avails itself of the California market, through the sale, marketing, and use
21 of its products in California, to render the exercise of jurisdiction over it by the California courts
22 consistent with traditional notions of fair play and substantial justice.

23 57. Venue is proper in this Court because the cause, or part thereof, arises in Alameda
24 County because defendants' products are sold, consumed, and are available for sale, in this
25 county.

26 ///

27 ///

28 ///

IV. STATUTORY BACKGROUND

A. Proposition 65

58. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as “Proposition 65” by a vote of the people in November of 1986.

59. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

60. An exposure to a chemical in a consumer product is one “which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 27, § 25601, subd. (b).)

61. Proposition 65 establishes a procedure by which the state is to develop a list of chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, § 25249.8.) No warning need be given concerning a listed chemical until one year after the chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

62. Any person “violating or threatening to violate” the statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To “threaten to violate” is defined to mean “to create a condition in which there is a substantial probability that a violation will occur.” (*Id.*, § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

63. Actions to enforce the law “may be brought by the Attorney General in the name of the People of the State of California or by any district attorney.” (*Id.*, § 25249.7, subd. (c).) Private parties are given authority to enforce Proposition 65 “in the public interest,” but only if the private party first provides written notice of a violation to the alleged violator, the Attorney General, and every District Attorney in whose jurisdiction the alleged violation occurs. If no

1 public prosecutors commence enforcement within sixty days, then the private party may sue.
2 (Health & Saf. Code, § 25249.7, subdivision (d).)

3 64. In an action by the Attorney General, the Attorney General may “seek and recover
4 costs and attorney’s fees on behalf of any party who provides a notice pursuant to subdivision (d)
5 and who renders assistance in that action.” (*Id.*, § 25249.7, subd. (j).)

6 **B. The Unfair Competition Law**

7 65. California Business and Professions Code section 17200 provides that “unfair
8 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section
9 17203 of the Business and Professions Code provides that “(a)ny person performing or proposing
10 to perform an act of unfair competition within this state may be enjoined in any court of
11 competent jurisdiction.”

12 66. Unlawful acts under the statute include any act that is unlawful that is conducted as
13 part of business activity, and therefore include violations of Proposition 65.

14 67. Business and Professions Code section 17206, subdivision (a), provides that any
15 person violating section 17200 “shall be liable for a civil penalty not to exceed two thousand five
16 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil
17 action brought in the name of the people of the State of California by the Attorney General or by
18 any district attorney.” Under section 17205, these penalties are “cumulative to each other and to
19 the remedies or penalties available under all other laws of this state.”

20 **V. FACTS**

21 68. “Lead” was placed on the Governor’s list of chemicals known to the State of
22 California to cause reproductive toxicity on February 27, 1987. It is specifically identified under
23 three subcategories: “developmental reproductive toxicity,” which means harm to the developing
24 fetus, “female reproductive toxicity,” which means harm to the female reproductive system, and
25 “male reproductive toxicity,” which means harm to the male reproductive system. (Cal. Code
26 Regs., tit. 27, § 27001.)

27 69. “Lead and lead compounds” was added to the list of chemicals known to the state to
28 cause cancer on October 1, 1992. (*Id.*)

1 70. Vitamin Supplements made by defendants contain lead, which is ingested by
2 consumers when they use the products for their intended purpose.

3 71. Each defendant either knows that its vitamin supplements contain lead, and that
4 persons using the products as intended will be exposed to lead thereby, or the People are informed
5 and believe that the defendant has such knowledge, and based on such information and belief, the
6 People allege that each defendant has such knowledge; or the fact of such knowledge is likely to
7 have evidentiary support after a reasonable opportunity for further investigation or discovery.

8 72. Each defendant has manufactured, distributed, or sold Vitamin Supplements that
9 contain lead in California, or has made such Vitamin Supplements available for sale in California.

10 73. The People are informed and believe, and based on such information and belief,
11 allege, that each defendant has failed to provide clear and reasonable warnings that the use of the
12 products in question results in exposure to a chemical known to the State of California to cause
13 birth defects or other reproductive harm, and cancer, and that no such warning was provided to
14 those individuals by any other person.

15 **VI. FIRST CAUSE OF ACTION**

16 (Against Each Defendant for Violation of Proposition 65)

17 74. Paragraphs 1 through 78 are realleged as if fully set forth herein.

18 75. The People are informed and believe, and based on such information and belief,
19 allege, that each defendant employs ten or more persons.

20 76. By committing the acts alleged above, each defendant has, in the course of doing
21 business, knowingly and intentionally exposed individuals to chemicals known to the State of
22 California to cause cancer or reproductive toxicity without first giving clear and reasonable
23 warning to such individuals, within the meaning of Health and Safety Code section 25249.6, or
24 threatened to violate Section 25249.6, within the meaning of Health and Safety Code section
25 25249.7, subdivision (a).

26 77. Said violations render each defendant liable to Plaintiff for civil penalties not to
27 exceed \$2,500 per day for each violation, as well as other remedies.

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1 **VII. SECOND CAUSE OF ACTION**

2 (Against Each Defendant for Unlawful Business Practices)

3 78. Paragraphs 1 through 78 are realleged as if fully set forth herein.

4 79. By committing the acts alleged above, each defendant has engaged in unlawful
5 business practices which constitute unfair competition within the meaning of Business and
6 Professions Code section 17200.

7 80. Said violations render each defendant liable to Plaintiff for civil penalties not to
8 exceed \$2,500 per day for each violation.

9 **VIII. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays that the Court:

11 1. Pursuant to the First and Second Causes of Action, grant civil penalties
12 according to proof;

13 2. Pursuant to Health and Safety Code section 25249.7 and Business and
14 Professions Code section 17203, enter such temporary restraining orders, preliminary
15 injunctions, permanent injunctions, or other orders prohibiting defendants from exposing
16 persons within the State of California to lead caused by the use of their products without
17 providing clear and reasonable warnings, as Plaintiff shall specify in further application to
18 the Court;

19 3. Enter such orders as "may be necessary to restore to any person in interest any
20 money or property, real or personal, which may have been acquired by means of" these
21 unlawful acts, as provided in Business and Professions Code section 17203 and other
22 applicable laws;

23 4. Award Plaintiff its costs of suit;

24 5. Grant such other and further relief as the court deems just and proper.
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27
28

1 Dated: March 27, 2009

Respectfully Submitted,

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Attorney General of California

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***People v. 21st Century Healthcare, Inc. et al.***
Case No.: **RG08426937**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 27, 2009, I served the attached **FIRST AMENDED COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

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Formulas, Inc., and Solgar, Inc.*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 27, 2009, at Oakland, California.

Yebonya Collins
Declarant


Signature